

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS,

Plaintiff,

v.

FASTRIP OIL COMPANY, L.P.,

Defendant.

Case No. 1:21-cv-01034-AWI-HBK

ORDER DIRECTING COUNSEL TO FILE  
PROOF OF SERVICE OF SUGGESTION OF  
DEATH

TWENTY-ONE DAY DEADLINE

(Doc. No. 6)

Plaintiff's counsel filed a Suggestion of Death Upon the Record Under Rule 25(a)(1), noting Plaintiff died on July 22, 2021. (Doc. No. 6, "Suggestion"). The Suggestion contains no certificate of service indicating that decedent's successor-in-interest received notice. (*Id.*).

Federal Rule of Civil Procedure 25 provides

[i]f a party dies and the claim is not thereby extinguished, the court may order substitute of the proper parties. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a). The party filing the notice of death "must serve the other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of a motion to substitute. *Id.*, 25(a)(1). A party may be served the suggestion of death by service on his or her attorney, Fed R. Civ. P. 5(b), while non-party


1 successors or representatives of the deceased party must be served the suggestion of death in the  
2 manner provided by Rule 4 for the service of summons. *See Barlow v. Ground*, 39 F.3d 231, 233  
3 (9th Cir. 1994). “[T]he 90-day period provided by Rule 25(a)(1) will not be triggered against [the  
4 decedent’s] estate until the appropriate representative of the estate is served a suggestion of death  
5 in the manner provided by Federal Rule of Civil Procedure 4.” *Id.* at 233-234.

6 It does not appear a representative of Plaintiff’s estate received notice because no  
7 certificate of service accompanied Plaintiff’s Suggestion. (*See* Doc. No. 6). Only Defendant  
8 received notice. Although Plaintiff’s counsel filed the Suggestion, the Ninth Circuit noted that  
9 non-party successors or representative of the deceased party “may not be protected by the  
10 attorney of the deceased party. It is entirely possible that no relationship will exist between  
11 them.” *Barlow*, 39 F.3d at 233. Therefore, Plaintiff’s filing of the Suggestion did not trigger the  
12 running of the 90-day period.

13 Accordingly, it is **ORDERED**:

14 Counsel for Plaintiff shall file proof of service of suggestion of death upon nonparty  
15 successors or representatives of the deceased within twenty-one (21) days from the date of this  
16 Order.

17  
18 Dated: August 6, 2021

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE